

# Program Brief

## **“ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION”**

**Lectures by  
Jack RAKOVE**

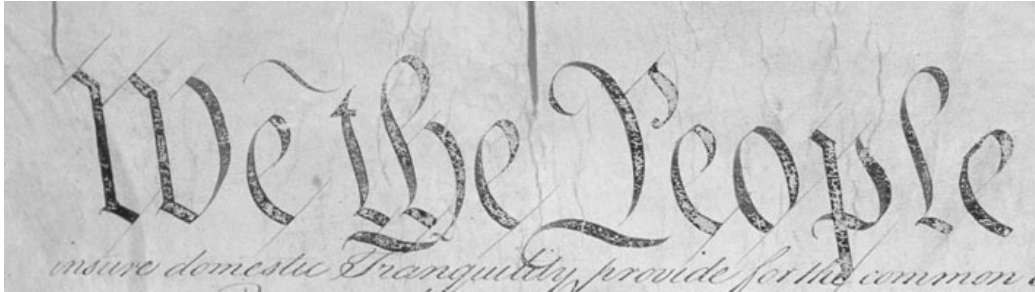
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## U.S. GOVERNMENT RESOURCES



(Source: <http://www.archives.gov/national-archives-experience/charters/constitution.html>)

### ***OUTLINE OF U.S. HISTORY***

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<http://usinfo.state.gov/products/pubs/histryotln/national.htm>



### Chapter 4: "The Formation of a National Government"

*"Every man, and every body of men on Earth, possesses the right of self government."*

- Drafter of the Declaration of Independence Thomas Jefferson, 1790

### CONSTITUTIONAL CONVENTION

... A remarkable gathering of notables assembled at the Federal Convention in May 1787. The state legislatures sent leaders with experience in colonial and state governments, in Congress, on the bench, and in the army. Washington, regarded as the country's first citizen because of his integrity and his military leadership during the Revolution, was chosen as presiding officer.

Prominent among the more active members were two Pennsylvanians: Gouverneur Morris, who clearly saw the need for national government, and James Wilson, who labored indefatigably for the national idea.



George Washington addressing the Constitutional Convention in Philadelphia, 1787. (Virginia Museum of Fine Arts, Richmond. Gift of Edgar William and Bernice Chrysler Garbisch.)

Also elected by Pennsylvania was Benjamin Franklin, nearing the end of an extraordinary career of public service and scientific achievement. From Virginia came James Madison, a practical young statesman, a thorough student of politics and history, and, according to a colleague, "from a spirit of industry and application ... the best informed man on any point in debate." He would be recognized as the "Father of the Constitution."

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Congress had authorized the Convention merely to draft amendments to the Articles of Confederation but, as Madison later wrote, the delegates, "with a manly confidence in their country," simply threw the Articles aside and went ahead with the building of a wholly new form of government.

They recognized that the paramount need was to reconcile two different powers -- the power of local control, which was already being exercised by the 13 semi-independent states, and the power of a central government. They adopted the principle that the functions and powers of the national government -- being new, general, and inclusive -- had to be carefully defined and stated, while all other functions and powers were to be understood as belonging to the states. But realizing that the central government had to have real power, the delegates also generally accepted the fact that the government should be authorized, among other things, to coin money, to regulate commerce, to declare war, and to make peace.

#### DEBATE AND COMPROMISE

The 18th-century statesmen who met in Philadelphia were adherents of Montesquieu's concept of the balance of power in politics. This principle was supported by colonial experience and strengthened by the writings of John Locke, with which most of the delegates were familiar. These influences led to the conviction that three equal and coordinate branches of government should be established. Legislative, executive, and judicial powers were to be so harmoniously balanced that no one could ever gain control. The delegates agreed that the legislative branch, like the colonial legislatures and the British Parliament, should consist of two houses.

On these points there was unanimity within the assembly. But sharp differences also arose. Representatives of the small states -- New Jersey, for instance -- objected to changes that would reduce their influence in the national government by basing representation upon population rather than upon statehood, as was the case under the Articles of Confederation.

On the other hand, representatives of large states, like Virginia, argued for proportionate representation. This debate threatened to go on endlessly until Roger Sherman came forward with arguments for representation in proportion to the population of the states in one house of Congress, the House of Representatives, and equal representation in the other, the Senate.

The alignment of large against small states then dissolved. But almost every succeeding question raised new divisions, to be resolved only by new compromises. Northerners wanted slaves counted when determining each state's tax share, but not in determining the number of seats a state would have in the House of Representatives. According to a compromise reached with little dissent, tax levies and House membership would be apportioned according to the number of free inhabitants plus three-fifths of the slaves.

Certain members, such as Sherman and Elbridge Gerry, still smarting from Shays's Rebellion, feared that the mass of people lacked sufficient wisdom to govern themselves and thus wished no branch of the federal government to be elected directly by the people. Others thought the national government should be given as broad a popular base as possible. Some delegates wished to exclude the growing West from the opportunity of statehood; others championed the equality principle established in the Northwest Ordinance of 1787.

There was no serious difference on such national economic questions as paper money, laws concerning contract obligations, or the role of women, who were excluded from politics. But there was a need for balancing sectional economic interests; for settling arguments as to the powers, term, and selection of the chief executive; and for solving problems involving the tenure of judges and the kind of courts to be established.

Laboring through a hot Philadelphia summer, the convention finally achieved a draft incorporating in a brief document the organization of the most complex government yet devised -- one that would be supreme within a clearly defined and limited sphere. It would have full power to levy taxes, borrow money, establish uniform duties and excise taxes, coin money, regulate interstate commerce, fix weights and measures, grant patents and copyrights, set up post offices, and build post roads. It also was authorized to raise and maintain an army and navy, manage Native-American affairs, conduct foreign policy, and wage war. It could pass laws for naturalizing foreigners and controlling public lands; it could admit new states on a basis of absolute equality with the old. The power to pass all necessary and proper laws for executing these clearly defined powers rendered the federal government able to meet the needs of later generations and of a greatly expanded body politic.

The principle of separation of powers had already been given a fair trial in most state constitutions and had proved sound.

Accordingly, the convention set up a governmental system with separate legislative, executive, and judiciary branches -- each checked by the others. Thus congressional enactments were not to become law until approved by the president. And the president was to submit the most important of his appointments and all his treaties to the Senate for confirmation. The president, in turn, could be impeached and removed by Congress. The judiciary was to hear all cases arising under federal laws and the Constitution; in effect, the courts were empowered to interpret both the fundamental and the statute law. But members of the judiciary, appointed by the president and confirmed by the Senate, could also be impeached by Congress.

To protect the Constitution from hasty alteration, Article V stipulated that amendments to the Constitution be proposed either by two-thirds of both houses of Congress or by two-thirds of the states, meeting in convention. The proposals were to be ratified by one of two methods: either by the legislatures of three-fourths of the states, or by convention in three-fourths of the states, with the Congress proposing the method to be used.

Finally, the convention faced the most important problem of all: How should the powers given to the new government be enforced? Under the Articles of Confederation, the national government had possessed -- on paper -- significant powers, which, in practice, had come to naught, for the states paid no attention to them. What was to save the new government from the same fate?

At the outset, most delegates furnished a single answer -- the use of force. But it was quickly seen that the application of force upon the states would destroy the Union. The decision was that the government should not act upon the states but upon the people within the states, and should legislate for and upon all the individual residents of the country. As the keystone of the Constitution, the convention adopted two brief but highly significant statements:

*Congress shall have power ... to make all Laws which shall be necessary and proper for carrying into Execution the ... Powers vested by this Constitution in the Government of the United States. ...*  
(Article I, Section 7)

*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.* (Article VI)

Thus the laws of the United States became enforceable in its own national courts, through its own judges and marshals, as well as in the state courts through the state judges and state law officers.

Debate continues to this day about the motives of those who wrote the Constitution. In 1913 historian Charles Beard, in *An Economic Interpretation of the Constitution*, argued that the Founding Fathers represented emerging commercial-capitalist interests that needed a strong national government. He also believed many may have been motivated by personal holdings of large amounts of depreciated government securities. However, James Madison, principal drafter of the Constitution, held no bonds and was a Virginia planter. Conversely, some opponents of the Constitution owned large amounts of bonds and securities.

Economic interests influenced the course of the debate, but so did state, sectional, and ideological interests. Equally important was the idealism of the framers. Products of the Enlightenment, the Founding Fathers designed a government that they believed would promote individual liberty and public virtue. The ideals embodied in the U.S. Constitution remain an essential element of the American national identity.

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Full text: <http://usinfo.state.gov/products/pubs/histryotln/national.htm>

### ***OUTLINE OF U.S. GOVERNMENT***

published by the Bureau of International Information Programs/U.S. Department of State, posted September 2000

<http://usinfo.state.gov/products/pubs/outusgov/ch1.htm>

#### Chapter 1: "The Constitution: An Enduring Document"

*"This provision is made in a Constitution intended to endure for ages to come and, consequently, to be adapted to the various crises of human affairs."*

- John Marshall, Chief Justice of the U.S. Supreme Court, *McCulloch v. Maryland*, 1819

The Constitution of the United States is the central instrument of American government and the supreme law of the land. For 200 years it has guided the evolution of governmental institutions and has provided the basis for political stability, individual freedom, economic growth, and social progress.

The American Constitution is the world's oldest written constitution in force, one that has served as the model for a number of other constitutions around the world. The Constitution owes its staying power to its simplicity and flexibility. Originally designed in the late 18th century to provide a framework for governing 4 million people in 13 very different states along America's Atlantic coast, its basic provisions were so soundly conceived that, with only 27 amendments, it now serves the needs of more than 260 million Americans in 50 even more diverse states that stretch from the Atlantic Ocean to the Pacific.

The path to the Constitution was neither straight nor easy. A draft document emerged in 1787, but only after intense debate and six years of experience with an earlier federal union. The 13 British colonies in America declared their independence from their motherland in 1776. A year before, war had broken out between the colonies and Britain, a war for independence that lasted for six bitter years. While still at war, the colonies — now calling themselves the United States of America — drafted a compact that bound them together as a nation. The compact, designated the "Articles of Confederation and Perpetual Union," was adopted by a congress of the states in 1777 and formally signed in July 1778. The Articles became binding when they were ratified by the 13th state, Maryland, in March 1781.

The Articles of Confederation devised a loose association among the states and set up a federal government with very limited powers.

In such critical matters as defense, public finance, and trade, the federal government was at the mercy of the state legislatures. It was not an arrangement conducive to stability or strength. Within a short time the weakness of the confederation was apparent to all. Politically and economically, the new nation was close to chaos. In the words of George Washington, who would become the first president of the United States in 1789, the 13 states were united only "by a rope of sand."

It was under these inauspicious circumstances that the Constitution of the United States was drawn up. In February 1787 the Continental Congress, the legislative body of the republic, issued a call for the states to send delegates to Philadelphia, in the state of Pennsylvania, to revise the Articles. The Constitutional Convention convened on May 25, 1787, in Independence Hall, where the Declaration of Independence had been adopted 11 years earlier, on July 4, 1776. Although the delegates had been authorized only to amend the Articles of Confederation, they pushed aside the Articles and proceeded to construct a charter for a wholly new, more centralized form of government. The new document, the Constitution, was completed September 17, 1787, and was officially adopted March 4, 1789.

The 55 delegates who drafted the Constitution included most of the outstanding leaders, or Founding Fathers, of the new nation. They represented a wide range of interests, backgrounds, and stations in life. All agreed, however, on the central objectives expressed in the preamble to the Constitution: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

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Full text: <http://usinfo.state.gov/products/pubs/outusgov/ch1.htm>

### ***DEMOCRACY PAPERS***

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<http://usinfo.state.gov/products/pubs/democracy/>

"Constitutionalism: America & Beyond,"

by Greg Russell

*"Freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it."*

- John Locke, *Second Treatise*, Ch. 4

Constitutionalism or rule of law means that the power of leaders and government bodies is limited, and that these limits can be enforced through established procedures. As a body of political or legal doctrine, it refers to government that is, in the first instance, devoted both to the good of the entire community and to the preservation of the rights of individual persons.

Constitutional government, rooted in liberal political ideas, originated in Western Europe and the United States as a defense of the individual's right to life and property, and to freedom of religion and speech. In order to secure these rights, constitutional architects emphasized checks on the power of each branch of government, equality under the law, impartial courts, and separation of church and state. The exemplary representatives of this tradition include the poet John Milton, jurists Edward Coke and William Blackstone, statesmen such as Thomas Jefferson and James Madison, and philosophers such as Thomas Hobbes, John Locke, Adam Smith, Baron de Montesquieu, John Stuart Mill, and Isaiah Berlin.

Problems of constitutional governance in the 21st century will likely be problems within governments recognized as democratic. The modern-day phenomenon of "illiberal democracies" gains legitimacy, and thus strength, from the fact that these regimes seem reasonably democratic. Illiberal democracy -- that is, nominally democratic government shorn of constitutional liberalism -- is not simply inadequate but dangerous, bringing with it the erosion of liberty, the abuse of power, ethnic divisions, and even war. The spread of democracy around the world has not always been accompanied by a corresponding spread of constitutional liberty. A number of democratically elected leaders have used their authority to justify restricting freedoms. A living tradition of political liberty contributes something even more than free and fair elections, or additional opportunities for political expression. Liberal democracy also provides a legal foundation for the separation of governmental powers so as to uphold basic freedoms of speech, assembly, religion, and property.

#### Constitutionalism: historical foundations

Modern liberal political theories found practical expression in the struggle for constitutional government. The earliest, and perhaps greatest, victory for liberalism was achieved in England. The rising commercial class that had supported the Tudor monarchy in the 16th century led the revolutionary battle in the 17th, and succeeded in establishing the supremacy of Parliament and, eventually, of the House of Commons. What emerged as the distinctive feature of modern constitutionalism was not the insistence on the idea that the king is subject to law (although this concept is an essential attribute of all constitutionalism). This notion was already well established in the Middle Ages. What was distinctive was the establishment of effective means of political control whereby the rule of law might be enforced. Modern constitutionalism was born with the political requirement that representative government depended upon the consent of citizen subjects.

Moreover, modern constitutional government was intimately linked to economics and the power of the purse, the idea that those whose taxes fund the government must be represented in that government. The principle that economic supply and redress of grievances go hand-in-hand is the key to modern constitutional government. The decline of the king's feudal revenues, the growth of representative institutions, and a feeling of national solidarity, as opposed to symbolic allegiance to king and court, tended to make real and effective the limited character of kingship.



However, as can be seen through provisions in the 1689 Bill of Rights, the English Revolution was fought not just to protect the rights of property (in the narrow sense) but to establish those liberties which liberals believed essential to human dignity and moral worth.

The "rights of man" enumerated in the English Bill of Rights gradually were proclaimed beyond the boundaries of England, notably in the American Declaration of Independence of 1776 and in the French Declaration of the Rights of Man in 1789. The 18th century witnessed the emergence of constitutional government in the United States and in France, and the 19th century saw its extension with varying degrees of success to Germany, Italy, and other nations of the Western world.

### Constitutionalism and the legacy of the American Founders

The constitutional order of American society is built on the foundation of the consent of free and reasonable men and women, as expressed in the symbol of the "social contract" as a trust established for limited purposes. "Social contract" theories had their greatest currency in 17th- and 18th- century Europe, and are associated with English philosophers Thomas Hobbes and John Locke, and French philosopher Jean-Jacques Rousseau. These thinkers justified the political obligation of individuals to a community on the grounds of self-interest and reason, and were well aware of the advantages of a civil society where individuals have both rights and obligations, compared to the disadvantages of a "state of nature," a hypothetical condition characterized by a complete absence of governmental authority. This idea of a "social contract" reflects an underlying awareness that a viable community -- not just a government -- must be established if free government is to exist and if human beings are to be secured against the onslaught of the passions whose rule is the very definition of disorder, tyranny, and rebellion against the rational order of being. John Jay noted, in *Federalist* No. 2, that the individual relinquishes certain natural rights to society if government is to have requisite power to act in order to secure the common good. As a result, participation as a citizen in a constitutional democracy carries with it the responsibility of abiding by the laws and decisions of the community in its public transactions, even when the individual sharply disagrees. Both the "beast-man" -- the nihilistic criminal or anarchist -- and the "god-man" -- the potential dictator -- who take law into their own hands must be subdued or banished from society, so thought Aristotle and Spinoza. Hobbes, Locke, and the American Founding Fathers all agreed. This is the essential condition of civil society, without which it cannot exist. The laws and policies of constitutional government not only are limited in scope and grounded in consent. They are also bound to serve the well-being of the people of the society in general and of every single individual in it.

American statesmen -- revolutionaries and constitution-makers alike -- laid claim to this heritage as American history unfolded from the Declaration of Independence (1776), to the Articles of Confederation (1781), the conclusion of the Revolutionary War (1783), the framing of the Constitution (1787), and the ratification of the Bill of Rights (1791). A number of common themes typified this American struggle for liberty and constitutionalism.

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Full text: <http://usinfo.state.gov/products/pubs/democracy/dmpaper2.htm>

## **“A MORE PERFECT UNION: THE CREATION OF THE U.S. CONSTITUTION”**

Bibliographic note: Web version based on the *Introduction* by Roger A. Bruns to *A More Perfect Union: The Creation of the United States Constitution*. Washington, D.C.

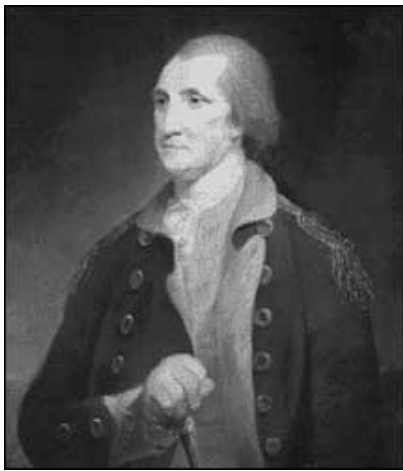
Published for the National Archives and Records Administration by the National Archives Trust Fund Board, 1986. 33 p.

U.S. National Archives and Records Administration

May 25, 1787, Freshly spread dirt covered the cobblestone street in front of the Pennsylvania State House, protecting the men inside from the sound of passing carriages and carts. Guards stood at the entrances to ensure that the curious were kept at a distance. Robert Morris of Pennsylvania, the "financier" of the Revolution, opened the proceedings with a nomination--Gen. George Washington for the presidency of the Constitutional Convention. The vote was unanimous. With characteristic ceremonial modesty, the general expressed his embarrassment at his lack of qualifications to preside over such an august body and apologized for any errors into which he might fall in the course of its deliberations.

To many of those assembled, especially to the small, boyish-looking, 36-year-old delegate from Virginia, James Madison, the general's mere presence boded well for the convention, for the illustrious Washington gave to the gathering an air of importance and legitimacy. But his decision to attend the convention had been an agonizing one. The Father of the Country had almost remained at home.

Suffering from rheumatism, despondent over the loss of a brother, absorbed in the management of Mount Vernon, and doubting that the convention would accomplish very much or that many men of stature would attend, Washington delayed accepting the invitation to attend for several months. Torn between the hazards of lending his reputation to a gathering perhaps doomed to failure and the chance that the public would view his reluctance to attend with a critical eye, the general finally agreed to make the trip. James Madison was pleased.



General George Washington was unanimously elected president of the Philadelphia convention.

### **The Articles of Confederation**

The determined Madison had for several years insatiably studied history and political theory searching for a solution to the political and economic dilemmas he saw plaguing America. The Virginian's labors convinced him of the futility and weakness of confederacies of independent states. America's own government under the Articles of Confederation, Madison was convinced, had to be replaced. In force since 1781, established as a "league of friendship" and a constitution for the 13 sovereign and independent states after the Revolution, the articles seemed to Madison woefully inadequate.

With the states retaining considerable power, the central government, he believed, had insufficient power to regulate commerce. It could not tax and was generally impotent in setting commercial policy. It could not effectively support a war effort. It had little power to settle quarrels between states. Saddled with this weak government, the states were on the brink of economic disaster. The evidence was overwhelming. Congress was attempting to function with a depleted treasury; paper money was flooding the country, creating extraordinary inflation--a pound of tea in some areas could be purchased for a tidy \$100; and the depressed condition of business was taking its toll on many small farmers. Some of them were being thrown in jail for debt, and numerous farms were being confiscated and sold for taxes.

In 1786 some of the farmers had fought back. Led by Daniel Shays, a former captain in the Continental army, a group of armed men, sporting evergreen twigs in their hats, prevented the circuit court from sitting at Northampton, MA, and threatened to seize muskets stored in the arsenal at Springfield. Although the insurrection was put down by state troops, the incident confirmed the fears of many wealthy men that anarchy was just around the corner. Embellished day after day in the press, the uprising made upper-class Americans shudder as they imagined hordes of vicious outlaws descending upon innocent citizens. From his idyllic Mount Vernon setting, Washington wrote to Madison: "Wisdom and good examples are necessary at this time to rescue the political machine from the impending storm."

Madison thought he had the answer. He wanted a strong central government to provide order and stability. "Let it be tried then," he wrote, "whether any middle ground can be taken which will at once support a due supremacy of the national authority," while maintaining state power only when "subordinately useful." The resolute Virginian looked to the Constitutional Convention to forge a new government in this mold.

The convention had its specific origins in a proposal offered by Madison and John Tyler in the Virginia assembly that the Continental Congress be given power to regulate commerce throughout the Confederation. Through their efforts in the assembly a plan was devised inviting the several states to attend a convention at Annapolis, MD, in September 1786 to discuss commercial problems. Madison and a young lawyer from New York named Alexander Hamilton issued a report on the meeting in Annapolis, calling upon Congress to summon delegates of all of the states to meet for the purpose of revising the Articles of Confederation. Although the report was widely viewed as a usurpation of congressional authority, the Congress did issue a formal call to the states for a convention. To Madison it represented the supreme chance to reverse the country's trend. And as the delegations gathered in Philadelphia, its importance was not lost to others. The squire of Gunston Hall, George Mason, wrote to his son, "The Eyes of the United States are turned upon this Assembly and their Expectations raised to a very anxious Degree. May God Grant that we may be able to gratify them, by establishing a wise and just Government."

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Full text: [http://www.archives.gov/national-archives-experience/charters/constitution\\_history.html](http://www.archives.gov/national-archives-experience/charters/constitution_history.html)

## **“CONSTITUTION OF THE UNITED STATES – QUESTIONS AND ANSWERS”**

by Sol Bloom

U.S. National Archives and Records Administration

Q. How were deputies to the Constitutional Convention chosen?

A. They were appointed by the legislatures of the different States.

Q. Were there any restrictions as to the number of deputies a State might send?

A. No.

Q. Which State did not send deputies to the Constitutional Convention?

A. Rhode Island and Providence Plantations.

Q. Were the other twelve States represented throughout the Constitutional Convention?

A. No. Two of the deputies from New York left on July 10, 1787, and after that Hamilton, the third deputy, when he was in attendance did not attempt to cast the vote of his State. The New Hampshire deputies did not arrive until July 23, 1787; so that there never was a vote of more than eleven States.

Q. Where and when did the deputies to the Constitutional Convention assemble?

A. In Philadelphia, in the State House where the Declaration of Independence was signed. The meeting was called for May 14, 1787, but a quorum was not present until May 25.

Q. About how large was the population of Philadelphia?

A. The census of 1790 gave it 28,000; including its suburbs, about 42,000.

Q. What was the average age of the deputies to the Constitutional Convention?

A. About 44.

Q. Who were the oldest and youngest members of the Constitutional Convention?

A. Benjamin Franklin, of Pennsylvania, then 81; and Jonathan Dayton, of New Jersey, 26.

Q. How many lawyers were members of the Constitutional Convention?

A. There were probably 34, out of 55, who had at least made a study of the law.

Q. From what classes of society were the members of the Constitutional Convention drawn?

A. In addition to the lawyers, there were soldiers, planters, educators, ministers, physicians, financiers, and merchants.

Q. How many members of the Constitutional Convention had been members of the Continental Congress?

A. Forty, and two others were later members.

Q. Were there any members of the Constitutional Convention who never attended any of its meetings?

A. There were nineteen who were never present. Some of these declined, others merely neglected the duty.

Q. Were the members of the Constitutional Convention called "delegates" or "deputies," and is there any distinction between the terms?

A. Some of the States called their representatives "delegates"; some, "deputies"; and some, "commissioners," the terms being often mixed. In the Convention itself they were always referred to as "deputies." Washington, for example, signed his name as "deputy from Virginia." The point is simply that whatever they called themselves, they were representatives of their States. The general practice of historians is to describe them as "delegates."

Q. Who was called the "Sage of the Constitutional Convention"?

A. Benjamin Franklin, of Pennsylvania.

Q. Who was called the "Father of the Constitution"?

A. James Madison, of Virginia, because in point of erudition and actual contributions to the formation of the Constitution he was preeminent.

Q. Was Thomas Jefferson a member of the Constitutional Convention?

A. No. Jefferson was American Minister to France at the time of the Constitutional Convention.

Q. What did Thomas Jefferson have to do with framing the Constitution?

A. Although absent from the Constitutional Convention and during the period of ratification, Jefferson rendered no inconsiderable service to the cause of Constitutional Government, for it was partly through his insistence that the Bill of Rights, consisting of the first ten amendments, was adopted.

Q. Who presided over the Constitutional Convention?

A. George Washington, chosen unanimously.

Q. How long did it take to frame the Constitution?

A. It was drafted in fewer than one hundred working days.

Q. How much was paid for the journal kept by Madison during the Constitutional Convention?

A. President Jackson secured from Congress in 1837 an appropriation of \$30,000 with which to buy Madison's journal and other papers left by him.

Q. Was there harmony in the Convention?

A. Serious conflicts arose at the outset, especially between those representing the small and large States.

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Full text: [http://www.archives.gov/national-archives-experience/charters/constitution\\_q\\_and\\_a.html](http://www.archives.gov/national-archives-experience/charters/constitution_q_and_a.html)

## **“TO FORM A MORE PERFECT UNION”**

Library of Congress

<http://memory.loc.gov/ammem/collections/continental/intro01.html>

### **“Creating a Constitution”**

The Constitutional Convention of 1787 was called to revise the ailing Articles of Confederation. However, the Convention soon abandoned the Articles, drafting a new Constitution with a much stronger national government. Nine states had to approve the Constitution before it could go into effect. After a long and often bitter debate, eleven states ratified the Constitution, which instituted a new form of government for the United States.

#### **Congress Tries to Revise the Articles of Confederation**

In May 1786, Charles Pinckney of South Carolina proposed that Congress revise the Articles of Confederation. Congress responded by appointing a committee to draft amendments to the Articles. On August 7, 1786, the committee produced these amendments, written chiefly by committee chairman Pinckney.

Among many changes, the amendments would have granted Congress exclusive power over commerce, and outlined punishments for poor attendance by members of Congress. Although the most ambitious effort to revise the Articles of Confederation, the amendments were never acted upon; a new convention meeting in Annapolis, Maryland, seemed likely to devise a plan for granting Congress power over trade.

#### **The Constitutional Convention Drafts a New Constitution**

On July 26, 1787, after two months of fierce debate over the structure and powers of a new federal government, the Constitutional Convention was ready to commit its resolutions to writing. Appointing a "committee of detail" to draft a written constitution, the Convention adjourned until August 6.

To prepare themselves, the committee first studied the Convention's resolutions, state constitutions, the Articles of Confederation, and other applicable reports and documents. Then, Edmund Randolph of Virginia wrote out a rough draft of a constitution, which the committee then discussed. James Wilson revised Randolph's draft, the committee reviewed it, and a clean copy was sent to prominent Philadelphia printers John Dunlap and David Claypoole. The Convention told them to print just enough copies for use by the delegates; the draft was to be kept secret to avoid controversy.

#### **The Constitutional Convention Completes a New Constitution**

After five weeks of debate over the committee of detail's draft Constitution, the Constitutional Convention appointed a committee of style to prepare a final version; Gouverneur Morris, later known as the "penman of the Constitution," did most of the work.

On September 17, 1787, after several days of further revision, the Constitutional Convention voted in favor of the Constitution. The states were left to accept or reject this new plan of government. Delegate James Madison, one of the Constitution's most fervent advocates, felt that the success or failure of the American Constitution "would decide forever the fate of republican government."

#### The Continental Congress Institutes a New Government

As the states considered the proposed Constitution, Congress assembled, but with a new government in the making, the old government had little to do. As one delegate wrote: "To your demand to know what we are doing in Congress? I answer -- Nothing. To your enquiry what we have done? I answer -- almost nothing... The States have been in such a flutter about the New, that they have hardly paid attention to the old Government." On July 2, 1788, Congress received the momentous news that New Hampshire had just become the ninth state to ratify the new Constitution, making it the law of the land.

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Full text: <http://memory.loc.gov/ammem/collections/continental/constit.html>

### **TIMELINE: AMERICA DURING THE AGE OF REVOLUTION, 1786-1788**

Library of Congress

#### **1786**

**Attempts to Revise the Articles of Confederation.** In Congress, Charles Pinckney proposed a revision of the Articles of Confederation. A committee debated the question, and recommended several changes, including granting Congress power over foreign and domestic commerce, and enabling Congress to collect money owed by the states. Under the Articles, unanimous approval from all thirteen states would be necessary to pass the suggested changes. Doubting that all the states would ever agree, Congress never acted.

**Annapolis Convention.** Nine states agreed to send delegates to Annapolis to discuss commerce, but only five state delegations arrived on time. Because of the poor attendance, the delegates decided to invite the states to another convention. Alexander Hamilton drafted an address to the states, inviting them to a convention to be held in Philadelphia in 1787, to discuss not only commerce, but all matters necessary to improve the federal government. After debate, on February 21, 1787, Congress endorsed the plan to revise the Articles of Confederation.

#### **1787**

**The Constitutional Convention.** Every state but Rhode Island sent delegates to the Constitutional Convention in Philadelphia. The gathering included some of the most respected and talented men in America. George Washington was named president.

Edmund Randolph proposed the "Virginia Plan," drafted by James Madison -- a plan that recommended an entirely new form of government, including an executive, a judiciary, and a legislature composed of two houses and including a number of representatives from each state based on their population.

Opposition came from the small states, which feared domination by the more populous states in the legislature. William Paterson proposed the "New Jersey Plan," which essentially revised the Articles of Confederation, preserving equal representation of the states. After much debate, the Convention rejected the New Jersey Plan, deciding instead to work toward an entirely new form of government.

The issue of representation in the two houses of the new national legislature became a major sticking point for the Convention. Roger Sherman was helpful in framing the "Connecticut Compromise," a plan that suggested representation in the lower house (the House of Representatives) based on population, and equal representation in the upper house (the Senate). With this compromise, the Convention succeeded in completing a rough draft of a constitution.

A Committee of Style was appointed to create a final draft; Gouverneur Morris was chosen to write it. After carefully reviewing the draft, the Convention approved the Constitution on September 17. After signing it and sending it to Congress, the Convention adjourned.

**Northwest Ordinance.** While the Constitutional Convention debated a new government, Congress decided upon a plan for governing all western territories north of the Ohio River. The Northwest Ordinance provided for a plan of government, the creation of states, the acceptance of each new state as an equal of the original states, freedom of religion, right to a trial by jury, public support of education, and the prohibition of slavery. Arthur St. Clair was named first governor of the territory.

**Congress Receives the Constitution.** Although some congressmen were displeased at the Convention for doing far more than revising the Articles of Confederation, on September 28 Congress agreed to pass the Constitution on to the states, so each could debate it in separate ratifying conventions. Nine states had to agree to the new Constitution for it to go into effect.

**"The Federalist."** Supporters of the Constitution -- Federalists -- and opponents of the Constitution -- Antifederalists -- fought fiercely in the press. Seventy-seven essays, written anonymously by "Publius," appeared in New York newspapers, explaining and defending the new Constitution. These essays, published in book form with eight additional essays, were titled *The Federalist*. Written by Alexander Hamilton, James Madison, and John Jay, *The Federalist* was the most organized, coherent effort to defend the Constitution.

**1788**

**The Constitution Is Ratified by Nine States.** On June 21, New Hampshire became the ninth state to ratify the new Constitution, making its adoption official. Preceding New Hampshire were Delaware, Pennsylvania, New Jersey, Georgia, Connecticut,



Massachusetts, Maryland, and South Carolina. Virginia and New York ratified shortly after New Hampshire, followed by North Carolina in November 1789. Rhode Island was last to ratify, not joining the Union until May 1790.

**Congress Steps Aside for a New Government.** On July 2, Congress announced that the Constitution had been adopted. By September, a committee had prepared for the change in government, naming New York City as the temporary official capital, and setting dates for elections and for the meeting of the first Congress under the new Constitution. Congress completed its business on October 10. Its last action was the granting of ten square miles of land to Congress for a federal town.

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Full text: <http://memory.loc.gov/ammem/collections/continental/timeline2e.html>

Full text: <http://memory.loc.gov/ammem/collections/continental/timeline2f.html>

### ***CONSTITUTIONALISM AND EMERGING DEMOCRACIES***

Electronic Journal, published by the Bureau of International Information Programs/U.S. Department of State, posted March 2004  
<http://usinfo.state.gov/journals/itdhr/0304/ijde/ijde0304.htm>

- **“The U.S. Constitution: America’s Most Important Export”**

by Albert P. Blaustein

*America's Founding Fathers drafted the world's first written constitution more than 200 years ago. The legacy of that historical document is evident today in the constitutions of most of the world's democracies, and it continues to influence drafters of the very newest constitutions. Celebrating this important document, a distinguished constitutional scholar discusses how the Philadelphia model helped to change the world and how it continues to be a model for democratic governance.*

THE U.S. CONSTITUTION is America's most important export. From its very inception, its influence has been felt throughout the world. And even where that influence has not resulted in democracy and freedom, it has still brought hope—in President Abraham Lincoln's words—of government of, by, and for the people.

The story of that influence is a tale worth telling. America's Founding Fathers fashioned a constitution that was a unique breakthrough in the continuing struggle for human freedom. They believed in the principle of constitutional government, which they hoped might have relevance beyond America. Thomas Jefferson looked upon the Constitution as a standing monument and a permanent example for other peoples. "It is impossible," he wrote, "not to [sense] that we are acting for all mankind." President John Adams was convinced that American political ideas would profoundly affect other countries. Alexander Hamilton thought that it had been reserved to the American people to decide the question whether societies themselves are really capable of establishing good government. James Madison, president and contributor to the Federalist Papers, believed that posterity would be indebted to the Founding Fathers for their political achievement and for the sound governing principles provided for in the U.S. Constitution.

Thus it was the Founding Fathers who became the teachers of *why* and (more importantly) *how* constitutions should be written. Their principal students were the French. The Marquis de Lafayette, for example, admired Jefferson, as did other critics of the old regime in France. (There exists a draft of the 1789 French Declaration of the Rights of Man and Citizen—generally considered one of the most important human rights document ever drafted—with Jefferson's handwritten editing in the margins.) French scholars likewise clustered about Gouverneur Morris, a principal architect of the U.S. Constitution [who is credited with penning the preamble "We the People of the United States, in order to form a more perfect Union..."] when he visited Paris.

But it was not only Frenchmen who praised the Founding Fathers. The Polish Constitution, adopted May 3, 1791, preceded the French document by four months. Any perusal of the Polish charter—starting with the preamble itself—confirms the study of the American model. In addition, there are records of American constitutional consultations with German, Austrian, Belgian, Dutch, Spanish, and Portuguese scholars and with leaders from the New World. One of the leaders of the Brazilian revolutionary movement, Mason Jose Joaquim da Maia, met with Jefferson in France for such discussions.

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Full text: <http://usinfo.state.gov/journals/itdhr/0304/ijde/blaustein.htm>

- **“Building Blocks For a Constitution”**

by Herman Schwartz

*Noted author and constitutional scholar Herman Schwartz examines the challenges facing drafters of the world's newest constitutions. Schwartz elaborates on key building blocks to be considered by drafters of constitutions such as governmental structure, human rights protection, and procedures for amendment.*

THOSE WHO WRITE constitutions for emerging democracies face daunting challenges. First, they must write a document that enables the society to decide difficult and divisive questions peacefully, often under grave circumstances. At the same time they must establish effective protections for human rights, including the right of the minority to disagree.

Secondly, divisions and conflicts usually begin quickly and resolving these can create long-term problems. When the transformation is negotiated, as in much of the former Soviet bloc, the losers will try to hold on to as much power as they can. If the change involves the complete ouster of a regime, as in Iraq, then the winners will vie for power. The compromises resolving these disputes are often incorporated into the constitution, which can be troublesome in the long run. For example, compromises over slavery in the U.S. Constitution made it possible to get that Constitution adopted but were ultimately not good for the nation.

Moreover, a constitution is written at a specific point in time, usually when the society faces very difficult economic, social and other problems. There is a temptation and often a necessity to deal with these problems quickly. But provisions designed to quickly deal with immediate problems may not be appropriate solutions for the long term.

Overhanging all documents written at a specific time and place is the fact that it is impossible to foretell the future—and the future will always be different from what is anticipated. Thus, drafters of constitutions must give future governments the flexibility to meet unpredictable and unforeseeable challenges.

One lesson from near-universal experience is that human rights must be effectively protected immediately. When an authoritarian regime is ousted, the society inevitably experiences a sense of liberation and a yearning for freedom. But that sense of excitement does not last very long. Experience in new democracies and old demonstrates that if human rights are not adequately protected initially, it will be difficult to do so later.

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Full text: <http://usinfo.state.gov/journals/itdhr/0304/ijde/schwartz.htm>

- “Internet Sites on Constitutionalism”  
<http://usinfo.state.gov/journals/itdhr/0304/ijde/websites.htm>
- “Bibliography – Additional Readings On Constitutionalism”  
<http://usinfo.state.gov/journals/itdhr/0304/ijde/0304bib.htm>

## AMERICA’S FOUNDING FATHERS – DELEGATES TO THE CONSTITUTIONAL CONVENTION

U.S. National Archives and Records Administration

[http://www.archives.gov/national-archives-experience/charters/constitution\\_founding\\_fathers.html](http://www.archives.gov/national-archives-experience/charters/constitution_founding_fathers.html)



Image: Courtesy of the Collection of Gilcrease Museum, Tulsa

### James Madison, Virginia

The oldest of 10 children and a scion of the planter aristocracy, Madison was born in 1751 at Port Conway, King George County, VA, while his mother was visiting her parents. In a few weeks she journeyed back with her newborn son to Montpelier estate, in Orange County, which became his lifelong home. He received his early education from his mother, from tutors, and at a private school.

An excellent scholar though frail and sickly in his youth, in 1771 he graduated from the College of New Jersey (later Princeton), where he demonstrated special interest in government and the law. But, considering the ministry for a career, he stayed on for a year of postgraduate study in theology.

Back at Montpelier, still undecided on a profession, Madison soon embraced the patriot cause, and state and local politics absorbed much of his time.

In 1775 he served on the Orange County committee of safety; the next year at the Virginia convention, which, besides advocating various Revolutionary steps, framed the Virginia constitution; in 1776-77 in the House of Delegates; and in 1778-80 in the Council of State. His ill health precluded any military service.

In 1780 Madison was chosen to represent Virginia in the Continental Congress (1780-83 and 1786-88). Although originally the youngest delegate, he played a major role in the deliberations of that body. Meantime, in the years 1784-86, he had again sat in the Virginia House of Delegates. He was a guiding force behind the Mount Vernon Conference (1785), attended the Annapolis Convention (1786), and was otherwise highly instrumental in the convening of the Constitutional Convention in 1787. He had also written extensively about deficiencies in the Articles of Confederation.

Madison was clearly the preeminent figure at the convention. Some of the delegates favored an authoritarian central government; others, retention of state sovereignty; and most occupied positions in the middle of the two extremes. Madison, who was rarely absent and whose Virginia Plan was in large part the basis of the Constitution, tirelessly advocated a strong government, though many of his proposals were rejected. Despite his poor speaking capabilities, he took the floor more than 150 times, third only after Gouverneur Morris and James Wilson. Madison was also a member of numerous committees, the most important of which were those on postponed matters and style. His journal of the convention is the best single record of the event. He also played a key part in guiding the Constitution through the Continental Congress.

Playing a lead in the ratification process in Virginia, too, Madison defended the document against such powerful opponents as Patrick Henry, George Mason, and Richard Henry Lee. In New York, where Madison was serving in the Continental Congress, he collaborated with Alexander Hamilton and John Jay in a series of essays that in 1787-88 appeared in the newspapers and were soon published in book form as *The Federalist* (1788). This set of essays is a classic of political theory and a lucid exposition of the republican principles that dominated the framing of the Constitution.

In the U.S. House of Representatives (1790-97), Madison helped frame and ensure passage of the Bill of Rights. He also assisted in organizing the executive department and creating a system of federal taxation. As leaders of the opposition to Hamilton's policies, he and Jefferson founded the Democratic-Republican Party.

In 1794 Madison married a vivacious widow who was 16 years his junior, Dolley Payne Todd, who had a son; they were to raise no children of their own. Madison spent the period 1797-1801 in semiretirement, but in 1798 he wrote the Virginia Resolutions, which attacked the Alien and Sedition Acts. While he served as Secretary of State (1801-9), his wife often served as President Jefferson's hostess.

In 1809 Madison succeeded Jefferson. Like the first three Presidents, Madison was enmeshed in the ramifications of European wars. Diplomacy had failed to prevent the seizure of U.S. ships, goods, and men on the high seas, and a depression wracked the country.

Madison continued to apply diplomatic techniques and economic sanctions, eventually effective to some degree against France. But continued British interference with shipping, as well as other grievances, led to the War of 1812.

The war, for which the young nation was ill prepared, ended in stalemate in December 1814 when the inconclusive Treaty of Ghent which nearly restored prewar conditions, was signed. But, thanks mainly to Andrew Jackson's spectacular victory at the Battle of New Orleans (Chalmette) in January 1815, most Americans believed they had won. Twice tested, independence had survived, and an ebullient nationalism marked Madison's last years in office, during which period the Democratic-Republicans held virtually uncontested sway.

In retirement after his second term, Madison managed Montpelier but continued to be active in public affairs. He devoted long hours to editing his journal of the Constitutional Convention, which the government was to publish 4 years after his death. He served as co-chairman of the Virginia constitutional convention of 1829-30 and as rector of the University of Virginia during the period 1826-36. Writing newspaper articles defending the administration of Monroe, he also acted as his foreign policy adviser.

Madison spoke out, too, against the emerging sectional controversy that threatened the existence of the Union. Although a slaveholder all his life, he was active during his later years in the American Colonization Society, whose mission was the resettlement of slaves in Africa.

Madison died at the age of 85 in 1836, survived by his wife and stepson.

## **“JAMES MADISON AND THE FEDERAL CONSTITUTIONAL CONVENTION OF 1787”**

Library of Congress

[http://memory.loc.gov/ammem/collections/madison\\_papers/mjmconst.html](http://memory.loc.gov/ammem/collections/madison_papers/mjmconst.html)

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Engendering a National Government

Like all successful political endeavors, the new federal Constitution—written just four years after the Treaty of Paris ended the American Revolution—has many "fathers" and many origins. None is more important than the economic/political unrest following the war and a band of ultra-nationalists led by Madison, Alexander Hamilton, John Jay, and George Washington.

Without going into the well-known peregrinations of the nationalists as they led the way to a federal Convention in Philadelphia in 1787, it is nonetheless important to note that the partnership between Washington and Madison was the key that unlocked the door to the convention hall. As Madison wrote to Washington on April 16, 1787, having "formed in my mind some outlines of a new system, I take the liberty of submitting them without apology, to your eye."

The outline for a new government that Madison entrusted to Washington originated in a paper he had just completed, "Vices of the Political System of the US [sic]." When the Virginia delegates arrived in Philadelphia in early May 1787 with Washington at their head, they immediately sat down and prepared a document based on Madison's outline that became known as the "Virginia Plan of Government." Madison's plan, which favored the large states and gave enormous power to a new federal government, became the nationalists' opening line of debate.

After four months of debate and compromise, recorded in great detail in Madison's "Notes of Debates of the Federal Convention of 1787," the Constitution of 1787 emerged. Yet even on the verge of triumph in the convention, Madison feared failure. Writing on September 6, 1787, to his friend Jefferson, then minister to France, Madison worried that the "plan should it be adopted will neither effectually answer its national object nor prevent the local mischiefs which every where excite disgusts against the state governments." But polished with a preamble written by Gouverneur Morris and the Committee of Style, the new constitution was presented and approved by 39 of the 42 delegates then in attendance.

#### Writing *The Federalist* and the Bill of Rights

Madison was a stalwart in defense of the new plan. Joining with Alexander Hamilton and John Jay to write a series of essays that could help turn public opinion toward ratification, Madison was a prime author of what became known as *The Federalist*—an oft-reprinted series of newspaper and then pamphlet articles. No one has absolutely identified the individual author of each of the 85 essays. Hamilton wrote more than 50 essays and Madison fewer than 20. Yet his acknowledged authorship of "Federalist Number 10," arguing that private rights and public good would be best protected in a single large republic rather than a mélange of small republics, cemented Madison's reputation as a nationalist and a political genius.

The federal Constitution was eventually approved by the states and went into effect in 1789. The absence of a Bill of Rights was the loudest and most effective criticism of it. Although he believed that individual rights were fully protected by the Constitution as it stood, Madison recognized that drafting a Bill of Rights was politically imperative. His "Notes for a Speech in Congress," June 8, 1789, highlights the arguments he used as a leader in the First Federal Congress to push 12 amendments to the Constitution through Congress in its first year. Ten of these amendments were ratified by the states and have been enshrined as the Bill of Rights.

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Full text: [http://memory.loc.gov/ammem/collections/madison\\_papers/mjmconst.html](http://memory.loc.gov/ammem/collections/madison_papers/mjmconst.html)

#### **"AN INTRODUCTION TO THE LIFE AND PAPERS OF JAMES MADISON"**

By J.C.A. Stagg

Library of Congress

... Crafting and Defending a Constitution

Aided by encyclopedias and historical treatises sent to him from Paris by Thomas

Jefferson, Madison began studying the histories of failed confederacies in the past, searching for the weaknesses that caused their downfall. When a convention of the states held at Annapolis, Maryland, in 1786 admitted its inability to solve the problems of the Union by calling for another convention to meet in 1787 to revise the Articles of Confederation, Madison was ready to respond.

His response was a memorandum entitled "Vices of the Political System of the United States." In May 1787 this memorandum served as the basis for the Virginia Plan, a series of resolutions that Madison drafted for the Federal Convention in Philadelphia. The resolutions called for the creation of a bicameral national legislature, based on proportional representation in both chambers and accompanied by a national judiciary and a national executive.

Madison's main goal was to limit the influence of the states in national politics. To this end, two of his resolutions recommended that both the national legislature and a Council of Revision--a body to be composed of executive and judicial officers--have the power to veto state laws. The delegates in Philadelphia adopted the Virginia Plan, which framed the agenda for the discussions that led to the Federal Constitution in September 1787.

Throughout the convention, Madison made detailed notes of its proceedings, partly for his own information and partly to provide a record for posterity of the origins of what he hoped would be the first successful republic in modern times. In the first six weeks of debate over the Virginia Plan, Madison argued vigorously for his preferred reforms of proportional representation and the federal veto. He opposed, equally vigorously, proposals to protect state equality as the basis for representation in national politics. Further, he was unwilling to leave the states with powers that might permit them to thwart congressional priorities.

Madison won his point on proportional representation in the House of Representatives, but otherwise experienced defeat. In the so-called "Great Compromise" of July 16, 1787, state equality became the foundation for the new Senate. Madison's proposals for a national veto and a Council of Revision were discarded in favor of more moderate provisions, namely the designation of all federal laws and treaties as the "supreme Law of the Land" and the creation of a judiciary whose powers extended to "all Cases in Law and Equity, arising under [the] Constitution, the Laws of the United States, and Treaties made . . . under their Authority".

Madison took these setbacks hard and could not immediately accept them. The full extent of his concern for their consequences was not revealed, however, until he wrote a lengthy letter to Jefferson on October 24, 1787, more than one month after the Convention had ended. In the deliberations of the Federal Convention after mid-July 1787, Madison took a less prominent role, although he spoke on several occasions in favor of strengthening the powers of the executive branch of the new government. As he viewed the finished Constitution, Madison was both exhausted by his labors and apprehensive about the future. Much had been accomplished, but, as he confessed to Jefferson, he also feared that the new government "might not answer its national object."

These misgivings were short-lived. Responding to an invitation from Alexander Hamilton of New York, Madison threw himself into the campaigns to ratify the Constitution, first by writing 29 of the Federalist essays for the New York press and then by taking the lead in the Virginia Convention of 1788 to outmaneuver the Anti-Federalists in his native state. In these efforts he was successful, but as the opponents of the Constitution proved more numerous than he had expected, Madison realized that their main objection to the new government--that it lacked a Bill of Rights--would have to be addressed. Accordingly, he took charge of that project in the first session of the First Congress in 1789 and reduced a list of more than 200 suggested amendments to the Constitution to 19. Congress chose 12 amendments to send to the states, 10 of which were adopted as the Bill of Rights.

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**Full text:** [http://memory.loc.gov/ammem/collections/madison\\_papers/essayStagg.pdf](http://memory.loc.gov/ammem/collections/madison_papers/essayStagg.pdf)



## MEDIA ITEMS

For full text please contact the American Reference Center: [arc@usembassy.at](mailto:arc@usembassy.at)

- **“THINKING LIKE A CONSTITUTION”**

by Jack N. Rakove, *Journal of the Early Republic*, Spring 2004, vol.24, iss. 1, pg. 1

The author reflects on the multiple facets of constitutionalism to aid him in analyzing the evolution of American constitutionalism during the quarter century after 1776. "Thinking Like a Constitution" is the product of those reflections that has two broad meanings. First, it uses a single, much-studied, and critical moment in James Madison's evolution as constitutional theorist and "engineer" to describe certain intellectual attributes that help to explain not only his own distinctive talents but also his success in setting the agenda for constitutional reform in 1787. Second, it also entails identifying and analyzing ways in which Americans wrestled with the implications of living under a written constitution that would operate not as a mere super-statute or transitional device establishing institutions but rather as supreme fundamental law.

- **“CONFESSIONS OF AN AMBIVALENT ORIGINALIST”**

by Jack N. Rakove, *New York University Law Review*, October 2003, vol.78, iss. 4, pg. 1346

The author discusses originalism in constitutional interpretation. Twenty-one decades and counting after its adoption, the Constitution contains all kinds of sleeper clauses just waiting to be activated in the course of human events. Since they have lain there dormant, occasion always exists to ask exactly how and why these suddenly controverted clauses made their way into the Constitution in the first place.

- **“EUROPE'S FLOUNDERING FATHERS”**

by Jack Rakove, *Foreign Policy*, September/October 2003, iss. 138, pg. 28

For both by American standards and those of contemporary constitutionalism, the nature of the current European project remains ambiguous and arguably deficient. In theory, it allows individual members of the EU either to block the adoption of the constitution or to truck and bargain for points they deem particularly important. And even though the constitution may weaken the legislative and regulatory powers of the member governments, it may not deprive them of a residual sovereign authority to opt out of the union should they so wish. Like the Continental Congress under the Articles of Confederation, the EU lacks the authority to tax. Yet the Continental Congress did have real authority over war and diplomacy, those classic markers of true sovereignty. Europe's proposed constitution, by contrast, goes no further than to create a new position of foreign minister without reducing the capacity of member states to maintain their individual and independent foreign policies.

- **“A FAULTY RETHINKING OF THE 2ND AMENDMENT” [OP-ED]**

by Jack Rakove, *The New York Times*, May 12, 2002, pg. 4.15

This argument is faulty because legal interpretation generally assumes that lawmakers act with clear purpose. More important, the Senate that made this critical deletion was dominated by Federalists who were skeptical of the militia's performance during the Revolutionary War and opposed to the idea that the future of American defense lay with the militia rather than a regular army. They had sound reasons not to commit the national government to supporting a mass militia, and thus to prefer a phrasing implying that the militia need not embrace the entire adult male population if Congress had good reason to require otherwise. The evidence of text and history makes it very hard to argue for an expansive individual right to keep arms.

Nor do the debates surrounding the adoption of the amendment support the idea that the framers were thinking of an individual right to own arms. The relevant proposals offered by the state ratification conventions of 1787-88 all dealt with the need to preserve the militia as an alternative to a standing army. The only recorded discussion of the amendment in the House of Representatives concerned whether religious dissenters should be compelled to serve in the militia. And in 1789, the Senate deleted one clause explicitly defining the militia as "composed of the body of the people." In excising this phrase, the Senate gave "militia" a narrower meaning than it otherwise had, thereby making the [John D. Ashcroft] interpretation harder to sustain.

- **“A NATION STILL LEARNING WHAT MADISON KNEW” [OP-ED]**

by Jack Rakove, *The New York Times*, March 11, 2001, pg. 4.15

The concept of sovereignty had traditionally been used to identify an absolute, final, irresistible authority within a government. Madison realized that the Constitution had destroyed that concept by vesting both the nation and states with particular sovereign powers, often in overlapping ways. To make this messy allocation work, Americans would need to puzzle out the distribution of powers on a case-by-case basis. The truth of federalism, Madison understood, lay in its prosaic details. Appeals to the ultimate sovereignty of either the union or the states were a formula for confrontation, not conciliation.

How did Madison acquire this understanding of rights? In large part, through his powerful commitment to freedom of conscience. For Madison, as for Thomas Jefferson, the horrific religious persecutions of the 16th and 17th centuries were the equivalent of what the history of racial slavery and discrimination has been for us: the most compelling example of the systematic denial of fundamental rights to unpopular minorities. Their radical solution to the religion problem was to recognize that every individual retains a sovereign right to accept or reject the claims of religion, entirely free of the coercive authority of the state or community. On all these questions, anyone who delves into Madison's writings will discover an original, creative, skeptical, quizzical and discriminating mind. These very qualities make him a more elusive figure to understand than Jefferson, with his passionate if problematic commitment to equality, or Benjamin Franklin, with his wit and wisdom, or even Alexander Hamilton, with his better grasp of public policy. But Madison was our most penetrating political thinker, and his birthday is well worth commemorating.

Please visit the homepage of the U.S. Embassy Vienna, Austria at: <http://www.usembassy.at>



The program page on **“Original Meanings: Politics and Ideas in the Making of the Constitution”** will be available at: <http://www.usembassy.at/en/embassy/photo/rakove.htm>

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